

SENATE BILL 1738
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 40, relative to the preservation, retention and disposal of evidence and biological material for DNA analysis or other forensic testing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 30, is amended by adding the following language as a new, appropriately designated part:

Section 40-30-501. As used in this part, unless the context otherwise requires:

(1) "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

(2) "Governmental entity" means the office of the district attorney general, any law enforcement agency, laboratory or laboratories, court or court clerk's office that are involved in the investigation or prosecution of any criminal case.

(3) "Biological material" means blood, semen, saliva, tissue, skin, hair, bone, teeth, fingernails, sweat, dandruff, mucus, ear wax, urine, feces, vaginal cells, rectal cells or any other material that might contain human DNA.

Section 40-30-502. Notwithstanding any provision of law to the contrary, the appropriate governmental entity shall retain and preserve all evidence or biological material that is susceptible to DNA analysis that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence or biological material is retained and preserved pursuant to this section, provided, that the evidence is retained and preserved in a condition suitable for DNA analysis and is retained and preserved in such manner as to avoid contamination or degradation or both. The duty to preserve evidence and biological material includes the duty to preserve any evidence that might contain biological material on it or in it.

Section 40-30-503.

(a) A governmental entity may dispose of evidence or biological material that is susceptible to DNA analysis before the expiration of the period of time required pursuant to § 40-30-502 if all of the following conditions are met:

(1) The governmental entity files a notice in the trial court that ordered the person's incarceration. The notice shall be served, either personally or by certified mail, return receipt requested, notifying all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the biological material:

(A) Any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case;

(B) Any counsel of record;

(C) The public defender in the county of conviction;

(D) The district attorney general in the district or county of conviction; and

(E) The state attorney general and reporter.

Evidence of the service of the notice shall be filed in the trial court.

(2) The notifying entity does not receive, within one hundred eighty (180) days of sending the notification, any of the following:

(A) A motion filed for DNA analysis, or in the alternative, a motion or a request for a hearing for the limited purpose of identifying human biological evidence or representative samples thereof to be preserved in accordance with § 40-30-502 for future DNA analysis. The motion or request shall contain an oath or affirmation of innocence by the individual. However, upon filing of the motion or request for hearing, the governmental entity shall retain the material only until the time that the court's denial of the motion or request is final. The court's denial of the motion or request is not final until any appellate review has passed.

(B) A request, under penalty of perjury, that the material not to be destroyed or disposed of because the declarant will file within one hundred eighty (180) days a motion for DNA analysis that is followed within one hundred eighty (180) days by a motion for DNA analysis, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

(3) No other provision of law requires that biological evidence be preserved or retained.

(b) Notwithstanding any provision of law to the contrary, the right to receive notice pursuant to this section is absolute and shall not be waived. This

prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

(c) The intentional destruction of biological material, except as permitted by this section, shall result in the appropriate sanctions including, but not limited to, criminal contempt.

Section 40-30-504. If DNA analysis is ordered and the result of the analysis is not favorable to the petitioner, the court shall make such further orders as may be appropriate to include, but not limited to, advising the department of correction as to the result of the analysis and that the analysis was directed as a result of the individual's oath of affirmation of innocence. The false oath or affirmation may be in the discretion of the department of correction grounds for disciplinary action against the individual under the procedures and rules and regulations of the department. Results of analysis that are not conclusive shall not be considered a result not favorable to the petitioner and the petitioner shall suffer no adverse action or consequences as a result. If the result of the analysis is favorable, the court shall order a hearing, notwithstanding any provision of law or rule of court that would bar such a hearing as untimely, and thereafter make such orders as are required or permitted by the rules of criminal procedure or part 2 of this chapter.

SECTION 2. This act shall take effect July 1, 2003, the public welfare requiring it.